IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 998 OF 2002

IN

SUIT NO. 983 OF 1996

Smt. Chandrakala S. Suirve and Ors. .....**Plffs.**
vs.
M/s. Renown Properties and
Holdings Ltd and ors. .....**Defnds.**
AND
Bajranglal Agarwal ....**Respds**

Mr. Kevil Setalvad i./b. M.P. Rege
for the plaintiffs.
Mr. A.A. Desai for defendant no.2.
Mr. Dhurat, Court Receiver present.
Mr. B.N. Agarwal for defendant no.5 and father of defendant no.2 present in person.

CORAM: S.U. KAMDAR, J.

DATE : 6th October, 2005.

P.C. :.

1. The present notice of motion is taken out for the appointment of the Court Receiver and for interim order of injunction. The present

proceedings arises in a suit which has been initiated by the owner of the property interalia claiming that the agreement dated 18.7.1985 stands terminated by virtue of the breach of the agreement by defendant no.1 and 2. Further reliefs are sought for the possession of the said property.

2. It is the case of the plaintiff that there was an agreement of sale entered into by and between the plaintiff and the defendant on 18.7.1985 and under Clause 23 it was provided that the consideration of a price of Rs.3 lacs to be paid in three instalments. It is the case of the plaintiff that except the first instalment of Rs.1,25,000/- the remaining instalments has not been paid. Accordingly the plaintiff claims that the agreement is validly terminated.

3. Even though there was no conveyance of the property in favour of the defendant no.1 and 2 it seems that the defendant no.1 and 2 mortgaged the suit property in favour of the Punjab national Bank who filed a suit in this court being Suit no. 1382

of 1991 inter-alia seeking relief inrespect of their claim and further seeking relief that the property is validly mortgaged in their favour. In that suit the plaintiff herein took out an application contending that the defendant no.1 and 2 had no right to create mortgage of the property in favour of the Punjab National Bank and by an order dated 13.12.1995 this court directed the applicant in that suit and the plaintiffs herein to file his own suit and for that purpose ten weeks were granted to enable the plaintiff herein to file a suit substantive on his own title. Pursuant to the said agreement the present suit is filed for the recovery of possession on the ground that the agreement is validly terminated. In the present suit a notice of motion was taken out by the plaintiff being Notice of Motion No. 530 of 1997 inter-alia claiming that the receiver which has been appointed in Punjab National Bank suit should not auction the property. Learned Judge accordingly granted the said reliefs on various terms. Being aggrieved by the said terms the plaintiffs filed an appeal being Appeal (L) No.

1213 of 1998k and by an order and judgment dated 15.1.1999 the said order passed by the learned single judge has been modified as under :

(i) that the plaintiff herein will be appointed as agent of the court Receiver which was already appointed in a bank suit.

(ii) that they will bear all expenses for maintenance of the suit property and that the court Receiver will take appropriate undertaking with regard to the protection of the suit property.

4. The said appeal has been disposed off by the aforesaid order passed by the division bench. It is the case of the plaintiff that pursuant to the said order dated 15.1.99 they were handed over the possession of the property as an agent of the Court Receiver. However the defendant no.1 and 2, the Punjab National Bank and the Respondent herein entered into a settlement inrespect of the claim of Punjab National Bank and ultimately filed consent

terms in that suit being Suit No. 1382 of 1991 in which Court Receiver was appointed on an ad-interim order. By an order dated 30.7.1991 the said consent terms are taken on record.

5. It is the case of the plaintiff herein that in the affidavit-in-support of the present motion in this suit that pursuant to the said order passed in the form of consent terms the receiver stood discharged and the Court Receiver took back possession from the plaintiff because they were in possession of the property only as an agent of the Court Receiver. It is the case of the plaintiff that thereafter the said possession has been handed over to the respondent herein under the settlement arrived at and as mentioned hereinabove.

5. On the other hand the learned counsel for defendant no.1 and 2 has contended that the whole suit filed by the plaintiff is without any merits. It has been contended that under the terms and conditions of the agreement it was required to make payment of Rs.3 lakhs. Admittedly Rs.1,25,000/-

has been paid as earnest money. In so far as the second instalment is concerned i.e. payment of further Rs.1,50,000/- he produced a receipt dated 5.11.1985 showing that the payment has been made by cheque bearing no. 02579 drawn by Oriental Bank of Commerce and only Rs.25,000/- is balance which according to the defendant no.1 and 2 are payable only on execution of the conveyance. He has also relied upon a declaration dated 11.8.1986 purported to have been executed by one Mr. Sriram Surve inrespect of the suit property in which he has confirmed that Rs.2,75,000/- is already been received. In so far the plaintiff in the present case is concerned they are not accepting the aforesaid payment of Rs.1,50,000/- and also disputing the receipt of the said payment. The declaration and the receipt which has been produced are executed by one Sriram Surve who has since expired in September 1999. The aforesaid documents which are produced by the defendant nos.1 and 2 were the documents already before the court in the earlier round of litigation being Notice of Motion no. 530 of 1997 and after considering the

aforesaid documents, the division bench as also in appeal court in Appeal No. 1213 of 1998 were of the opinion that the property is required to be protected and since the receiver was already appointed in the Punjab National Bank suit the plaintiff were appointed as agent of the Receiver. The possession is admittedly now with the defendant no.1 and 2 herein. In the present motion by an ad-interim order dated 12.4.2002 interim injunction was granted in terms of prayer clause (b). Thereafter the matter was on board on 1.7.2005 and 22.9.2005. The learned judge tried to settle the matter and pursuant thereof the defendant no.1 and 2 have deposited in this court a sum of Rs.5 lacs. However the matter has not been settled between the parties and the effort of trying to settle has failed. Learned counsel for the plaintiff however contends that Court Receiver should be appointed of the property and he should be appointed as agent thereof.

6. In my opinion no such relief can be granted because the agreement is of 1985 and admittedly

till 1994 the plaintiffs have taken no steps in the matter. The earlier interim orders passed in Appeal No.. 1213 of 19978 were passed merely because Receiver was already in possession in bank suit and therefore the Division Bench was of the opinion that the property can be protected by the plaintiff and were appointed as agent of the court receiver.

7. On the facts and circumstances of the case though the plaintiffs have disputed the receipt of Rs.1,50,000/- since the said amount is paid by cheque to the deceased at the relevant time I am of the opinion that it is not a fit case for the appointment of the Court Receiver,. However at the same time the suit requires a trial and till the suit is tried the property is required to be protected and preserved. In my opinion the property will be duly protected and preserved if ad-interim order passed in the present notice of Motion by an order dated 12.7.2002 in terms of prayer clause (b) is confirmed. In that view of the matter I confirm the ad-interim order dated

12.7.2002. The amount deposited by defendant no.1 and 2 pursuant to the orders passed on 1.7.2005 were only to test the readiness and willingness of the defendant and to see whether settlement is possible. By virtue of the fact that the said efforts having been failed as recorded by the learned judge himself I am of the opinion that the amount can be permitted to be withdrawn by the defendant no.1 and 2 immediately. The Prothonotary and Senior Master is directed to permit the defendant no.1 and 2 to withdraw the said amount deposited pursuant to the order dated 1.7.2005 with interest accrued if any. Motion disposed off accordingly. No orders as to costs.

sd/-

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